

March 18 2010

FOURTEENTH JUDICIAL DISTRICT COURT

Musselshell County Courthouse
Musselshell, Golden Valley, Wheatland, Meagher Counties

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

RANDAL I. SPAULDING
DISTRICT JUDGE

506 Main Street
Roundup, MT 59072



Derinda Hazelton
COURT ADMINISTRATOR

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March 16, 2010

Clerk of the Montana Supreme Court
Ed Smith
Room 323, Justice Building-215 North Sanders
P.O. Box 203003
Helena, Montana 59620-3003

FILED

MAR 18 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Re: *Andy Jensen v. Absarokee Water & Sewer District et al. - Stillwater County Cause DV-09-57; Montana Supreme Court Cause DA 10-0039*

Dear Sir,

Enclosed please find my Order Denying Plaintiff's Motion for Order Restoring Injunction Pending Appeal in the above-referenced cause. Pursuant to Rule 22, M. R. App. P. I am to forward a copy of my order to the Supreme Court for filing. So, please file the enclosed order as appropriate. If you have any questions or need anything further, please do not hesitate to call.

Sincerely,

A handwritten signature in cursive script, appearing to read "Randal I. Spaulding".
Randal I. Spaulding
District Judge

enc: Order

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FILED

MAR 17 2010

SANDRA M. FOX, CLERK

BY

DEPUTY

MONTANA TWENTY-SECOND JUDICIAL DISTRICT COURT,
STILLWATER COUNTY

ANDY JENSEN,

Plaintiff,

vs.

ABSAROOKE WATER & SEWER DISTRICT
and KARL GAUSTAD, MIKE BORSETH,
MARY ANNA ESPELAND, WENDY SCOTT,
and DEAN GAUSTAD,

Defendants.

Cause No. DV-09-57

ORDER DENYING PLAINTIFF'S MOTION FOR ORDER
RESTORING INJUNCTION PENDING APPEAL

On December 31, 2009, this Court entered its "Order Granting Defendant's Motion for Judgment on the Pleadings" in the above-referenced cause. Among other things, this Court concluded that Plaintiff's request for injunctive relief was without merit and the Court dissolved the ex parte Temporary Restraining Order previously issued on behalf of the Plaintiff on July 21, 2009.

On or about January 22, 2010, Plaintiff filed his appeal of this Court's decision to the Montana Supreme Court along with Plaintiff's "Motion for Order Restoring Injunction Pending

1 Appeal” pursuant to Rule 22 (1)(a)(iii) of the Montana Rules of Appellate Procedure.

2 On or about February 5, 2010, Defendant’s filed their brief in opposition to Plaintiff’s motion
3 for order restoring injunction pending appeal.
4

5 On or about February 9, 2010, Plaintiff filed Plaintiff’s reply brief in support of his motion
6 for order restoring injunction pending appeal.
7

8 Having considered Plaintiff’s motion, the briefs filed by counsel, the pleadings contained
9 within the court file, applicable statutes, rules, regulations, and case law, this Court enters its Order
10 Denying Plaintiff’s Motion for Order Restoring Injunction Pending Appeal.
11

12 DISCUSSION

13 Rule 22(1)(a)(iii), M. R. App. P. provides that a party desiring an order suspending,
14 modifying, restoring, or granting an injunction pending appeal shall file an appropriate motion with
15 the district court. Subsection (c) provides that the district court retains jurisdiction to rule on such
16 a motion despite the filing of an appeal. Subsection (d) of the rule requires that the district court
17 promptly enter a written order in regards to such a motion to include either findings of fact and
18 conclusions of law or a supporting rationale along with the relevant facts and legal authority upon
19 which the district court’s order is based.
20
21

22 On July 21, 2009, this Court entered its Temporary Restraining Order and Order to Show
23 Cause to Defendants without notice to Defendants based upon Plaintiff’s Complaint and Application
24 for Preliminary Injunction and Temporary Restraining Order and supporting affidavit.
25

26 In its December 31, 2009, Order Granting Defendant’s Motion for Judgment on the
27 Pleadings, and the show cause hearing on Plaintiff’s Motion for Preliminary Injunction, this Court
28 concluded that Defendants had the authority to manage and supervise the Plaintiff by statute
including the right to take administrative action potentially adversely affecting the Plaintiff’s

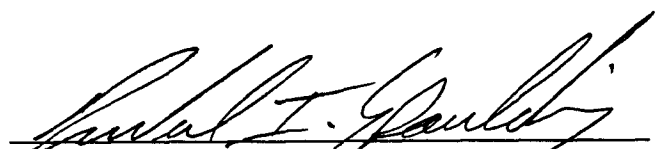
1 employment.¹ As such, this Court concluded that in so doing, Defendants were clearly executing a
2 public statute or statutes for the public benefit and that as such, a preliminary injunction would not
3 lie.²
4

5 In addition, this Court concluded that, to the extent that Plaintiff was seeking to prevent the
6 Defendants from terminating his employment in the future, injunctive relief was not appropriate as
7 because the Montana Wrongful Discharge from Employment Act affords the Defendant an adequate
8 remedy in the event the Defendant was wrongfully terminated.³
9

10 Essentially, this Court concluded then and concludes now that Plaintiff's request for
11 injunctive relief is without merit for the reasons noted and that a temporary restraining order should
12 not have issued in the first instance.
13

14 **ACCORDINGLY, IT IS HEREBY ORDERED** that Plaintiff's Motion for Order Restoring
15 Injunction Pending Appeal is without merit and is therefore **DENIED**.
16

17 **DATED** this 16th day of March, 2010.
18

19 
20 Hon Randal I. Spaulding, Presiding District Judge
21

22 **CERTIFICATE OF SERVICE**

23 This is to certify that true copies of the
24 foregoing were duly served upon all
25 attorneys of record at their addresses.

26 03/17/10

27 Sandra M Fox

28 Clerk of Court

By: 

Deputy

xc: Michael B. Anderson, Plaintiff's Counsel
Michael W. Sehestedt, Defendant's Counsel

¹ Order Granting Defendant's Motion for Judgment on the Pleadings, Page 13, Lines 16-20.

² Id. at 21-25.

³ Id. at Page 13-14, Lines 26-28 and 1-9.